

**AGREEMENT BETWEEN
OWNER AND ENGINEER**

THIS AGREEMENT is dated as of the 19th day of July in the year 2016, by and between the JOINT BOARD OF THE CITY OF WEST LAFAYETTE AND PURDUE UNIVERSITY, hereinafter called the **OWNER** and BUTLER, FAIRMAN and SEUFERT, INC., 8450 Westfield Boulevard, Suite 300, Indianapolis, Indiana 46240, hereinafter called the **ENGINEER**.

WITNESSETH

WHEREAS the **OWNER** requires professional engineering services in connection with the following described project:

State Street Redevelopment Project

WHEREAS, the **OWNER** wishes to engage the **ENGINEER** to provide certain services pertaining thereto; and

WHEREAS, the **ENGINEER** represents that it has sufficient qualified personnel and equipment and is capable of performing the professional engineering services described herein; is a corporation qualified to do business in the State of Indiana; and the services described herein will be performed under the supervision of an engineer licensed to practice in the State of Indiana.

The **OWNER** and the **ENGINEER**, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION I SERVICES BY ENGINEER

The services to be provided by the **ENGINEER** under this Agreement are set out in Appendix "A", attached to this Agreement, and made an integral part hereof.

SECTION II INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

The information and services to be furnished by the **OWNER** are set out in Appendix "B", attached to this Agreement, and made an integral part hereof.

SECTION III NOTICE TO PROCEED AND SCHEDULE

The **ENGINEER** shall begin the work to be performed under this Agreement upon receipt of the written notice to proceed from the **OWNER**, and shall deliver the work to the **OWNER** in accordance with the schedule contained in Appendix "C", attached to this Agreement, and made an integral part hereof. The **ENGINEER** shall not begin work prior to the date of the notice to proceed.

This Agreement shall be applicable to all assignments authorized by the **OWNER** and accepted by the **ENGINEER** subsequent to the date of execution and shall be effective as to all assignments authorized.

SECTION IV COMPENSATION

The **ENGINEER** shall receive payment for the work performed under this Agreement as set forth in Appendix "D", attached to this Agreement, and made an integral part hereof.

SECTION V MISCELLANEOUS PROVISIONS

Miscellaneous Provisions are set out in Appendix "E", attached to this Agreement, and made an integral part hereof.

SECTION VI GENERAL PROVISIONS

1. **Work Office**

The **ENGINEER** shall perform the work under this Agreement at the following office(s):

10 N. 3rd St., Lafayette, IN 47901

2. **Employment**

During the period of this Agreement, the **ENGINEER** shall not engage, on a full or part time or other basis, any personnel who remain in the employment of the **OWNER**.

3. **Subletting and Assignment**

The **ENGINEER** and its subcontractors, if any, shall not assign, sublet, subcontract, delegate or otherwise dispose of the whole or any part of the work under this Agreement without prior written consent of the **OWNER**. Consent for such assignment shall not relieve the **ENGINEER** of any of its duties or responsibilities hereunder.

4. **Use and Ownership**

Documents prepared by the **ENGINEER** are instruments of service, and the **ENGINEER** shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the **ENGINEER**) whether or not the Project is completed.

The **ENGINEER** will retain all pertinent records relating to the services performed for a period of five (5) years following performance of work, during which period the records will be made available to the **OWNER** at all reasonable times.

The **ENGINEER** agrees that the **OWNER** is not required to use any plan, report, drawing, specifications, advice, map, document or study prepared by the **ENGINEER** and the **ENGINEER** waives all right of redress against the **OWNER** if the **OWNER** does not utilize same. Any modification, amendment, misuse of any of the **ENGINEER's** work by the **OWNER** or actions that disregard the **ENGINEER's** recommendations to the **OWNER** shall release the **ENGINEER** from any and all liability in connection with such work modified, amended or misused thereafter and the **OWNER** shall not use the **ENGINEER's** name thereon without the expressed approval of the **ENGINEER**.

5. **Compliance with State and Other Laws**

The **ENGINEER** specifically agrees that in performance of the services herein enumerated by **ENGINEER** or by a subcontractor or anyone acting in behalf of either, that each will comply with all State, Federal, and Local Statutes, Ordinances, and Regulations.

6. **Professional Responsibility**

The **ENGINEER** will exercise reasonable skill, care, and diligence in the performance of services and will carry out all responsibilities in accordance with customarily accepted professional engineering practices. If the **ENGINEER** fails to meet the foregoing standard, the **ENGINEER** will perform at its own cost, and without reimbursement from the **OWNER**, the services necessary to correct errors and omissions which are caused by the **ENGINEER's** failure to comply with above standard, and which are reported to the **ENGINEER** within one (1) year from the completion of the **ENGINEER's** services for the Project.

In addition, the **ENGINEER** will be responsible to the **OWNER** for damages caused by its negligent conduct during **ENGINEER's** activities at the Project site or in the field to the extent covered by the **ENGINEER's** Comprehensive General Liability and Automobile Liability Insurance.

The **ENGINEER** shall not be responsible for errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of the **OWNER** or other consultants, including, without limitation, surveyors and geotechnical engineers, who have been retained by **OWNER**. The **ENGINEER** shall have no liability for errors or deficiencies in its designs, drawings, specifications and other services that were caused, or contributed to, by errors or deficiencies (unless such errors, omissions or deficiencies were known or should have been known by the **ENGINEER**) in the designs, drawings, specifications and other services furnished by the **OWNER**, or other consultants retained by the **OWNER**.

7. **Status of Claims**

The **ENGINEER** shall be responsible for keeping the **OWNER** currently advised as to the status of any known claims made for damages against the **ENGINEER** resulting from services performed under this Agreement. The **ENGINEER** shall send notice of claims related to work under this Agreement to the **OWNER**.

8. **Insurance**

The **ENGINEER** shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater:

General Liability (including automobile) - combined single limit of \$1,000,000.00;

Worker's Compensation - statutory limit; and

Professional Liability for protection against claims arising out of performance of professional services caused by negligent error, omission, or act in the amount of \$1,000,000.00.

The **ENGINEER** shall provide Certificates of Insurance indicating the aforesaid coverage upon request of the **OWNER**.

9. **Status Reports**

The **ENGINEER** shall furnish a monthly Status Report to the **OWNER** by the fifteenth (15th) of each month.

10. **Changes in Work**

In the event that either the **OWNER** or the **ENGINEER** determine that a major change in scope, character or complexity of the work is needed after the work has progressed as directed by the **OWNER**, both parties in the exercise of their reasonable and honest judgment shall negotiate the changes and the **ENGINEER** shall not commence the additional work or the change of the scope of the work until a supplemental agreement is executed and the **ENGINEER** is authorized in writing by the **OWNER** to proceed.

11. **Delays and Extensions**

The **ENGINEER** agrees that no charges or claim for damages shall be made by it for any minor delays from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Any such delays shall be compensated for by an extension of time for such period as may be determined by the **OWNER**, subject to the **ENGINEER's** approval. However, it being understood, that the permitting of the **ENGINEER** to proceed to complete any services, or any part of them after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the **OWNER** of any of its rights herein.

12. **Abandonment**

Services may be terminated by the **OWNER** and the **ENGINEER** at any time without cause upon 30 days written notice. If so abandoned, the **ENGINEER** shall deliver to the **OWNER** copies of all data, reports, drawings, specifications and estimates completed or partially completed along with a summary of the progress of the work completed within twenty (20) days of the abandonment. In the event of the failure by the **ENGINEER** to make such delivery upon demand, then and in that event the **ENGINEER** shall pay to the **OWNER** any damages sustained by reason thereof. The earned value of the work performed shall be based upon an estimate of the portions of the total services as have been rendered by the **ENGINEER** to the date of the abandonment for all services to be paid for on a lump sum basis. The **ENGINEER** shall be compensated for services properly rendered prior to the effective date of abandonment on all services to be paid on a cost basis or a cost plus fixed fee basis. The payment as made to the **ENGINEER** shall be paid as the final payment in full settlement and release for the services hereunder.

13. **Non-Discrimination**

Pursuant to Indiana and Federal Law, the **ENGINEER** and **ENGINEER's** subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

14. **Employment Eligibility Verification.**

The **ENGINEER** affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

The **ENGINEER** shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The **ENGINEER** is not required to participate should the E-Verify program cease to exist. Additionally, the **ENGINEER** is not required to participate if the **ENGINEER** is self-employed and does not employ any employees.

The **ENGINEER** shall not knowingly employ or contract with an unauthorized alien. The **ENGINEER** shall not retain an employee or contract with a person that the **ENGINEER** subsequently learns is an unauthorized alien.

The **ENGINEER** shall require its subconsultant, who perform work under this Contract, to certify to the **ENGINEER** that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. The **ENGINEER** agrees to maintain this certification throughout the duration of the term of a contract with a sub-consultant.

The **OWNER** may terminate for default if the **ENGINEER** fails to cure a breach of this provision no later than thirty (30) days after being notified by the **OWNER**.

15. **Successor and Assigns**

The **OWNER** and the **ENGINEER** each binds themselves and successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the **OWNER** and the **ENGINEER** shall assign, sublet or transfer their interest in the Agreement without the written consent of the other.

16. **Supplements**

This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

17. **Governing Laws**

This Agreement and all of the terms and provisions shall be interpreted and construed according to the laws of the State of Indiana. Should any clause, paragraph, or other part of this Agreement be held or declared to be void or illegal, for any reason, by any court having competent jurisdiction, all other causes, paragraphs or part of this Agreement, shall nevertheless remain in full force and effect.

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties thereto.

This Agreement shall not be binding until executed by all parties.

18. **Independent Engineer**

In all matters relating to this Agreement, the **ENGINEER** shall act as an independent engineer. Neither the **ENGINEER** nor its employees are employees of the **OWNER** under the meaning or application of any Federal or State Laws or Regulations and the **ENGINEER** agrees to assume all liabilities and obligations imposed in the performance of this Agreement. The **ENGINEER** shall not have any authority to assume or create obligations, expressed or implied, on behalf of the **OWNER** and the **ENGINEER** shall have no authority to represent as agent, employee, or in any other capacity than as set forth herein.

19. **Rights and Benefits**

The **ENGINEER's** services will be performed solely for the benefit of the **OWNER** and not for the benefit of any other persons or entities.

20. **Disputes**

All claims or disputes of the **ENGINEER** and the **OWNER** arising out of or relating to the Agreement, or the breach thereof, shall be first submitted to non-binding mediation. If a claim or dispute is not resolved by mediation, the party making the claim or alleging a dispute shall have the right to institute any legal or equitable proceedings in a court located within the county and state where the project is located.

21. **Limitation of Liability**

To the maximum extent permitted by law, the **OWNER** agrees to limit the **ENGINEER's** liability for the **ENGINEER's** damages to the sum of \$1,000,000.00 limit of Professional Liability insurance. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

22. **Litigation**

In the event litigation is commenced to enforce any term or condition of this agreement, the prevailing party shall be entitled to reasonable litigation costs including a reasonable attorney fee.

23. **Engaging in activities with Iran**

By signing this Agreement, **ENGINEER** certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

IN WITNESS WHEREOF, the **OWNER** and the **ENGINEER** have signed this Agreement in duplicate. One counterpart each has been delivered to the **OWNER** and the **ENGINEER**.

This Agreement will be effective on July 19, 2016.

ENGINEER:

BUTLER, FAIRMAN and SEUFERT, INC.



Michael A. Smith, Executive Vice-President

OWNER:

JOINT BOARD OF THE
CITY OF WEST LAFAYETTE, INDIANA
AND PURDUE UNIVERSITY



Ken Sandel, Chairman



Jason Dambkowski, Vice-Chairman

APPENDIX "A"

SERVICES BY ENGINEER

A. PROJECT DESCRIPTION

The **State Street Redevelopment Project** is located in West Lafayette, Indiana. The proposed project consists of roadway reconstruction, pedestrian facility upgrades, traffic signals improvements, one-way street conversions, and roadway safety and lighting improvements.

B. SCOPE OF WORK

1. Construction Management Services

Engineering Personnel

The **ENGINEER** will furnish a Dedicated Project Construction Representative to act as an extension of the **OWNER's** engineering staff for the period of time as noted below in Appendix "C" - SCHEDULE.

The qualifications and experiences of personnel provided by the **ENGINEER** are subject to approval by **OWNER**. No personnel will be assigned to the project until **OWNER** approval is obtained. David Garwood, P.E. is the proposed Dedicated Project Construction Representative.

The Dedicated Project Construction Representative will coordinate project activities with the Joint Board of the City of West Lafayette and Purdue University.

2. Construction Inspection and Observation Services

Engineering Personnel

For the fulfillment of all services outlined below, the **ENGINEER** will provide a Dedicated Project Supervision Representative as required for a period of time necessary to complete the construction project and final closeout documents.

The qualifications and experiences of personnel provided by the **ENGINEER** are subject to approval by the **OWNER**. No personnel will be assigned to the project until **OWNER** approval is obtained.

The Dedicated Project Supervision Representative will coordinate project activities with the **OWNER's** Project Coordinator.

Description of Services

a. Construction Schedule: Review the construction schedule prepared by the Contractor for compliance with the Contract Documents, and give to the **OWNER** detailed documentation concerning its acceptability.

b. Conferences: Attend weekly design, pre-construction, and construction meetings and conferences as directed by the **OWNER**. Record for the **OWNER**, as directed, minutes of such meetings. The **ENGINEER** shall be available for conferences as requested by the **OWNER** to review working details of the project. The **OWNER** may review and inspect the activities whenever desired during the life of the Agreement.

c. Liaison: Serve as the **OWNER**'s liaison with the developer, working principally through the Developer's field superintendent or such other person in authority as designated by the Contractor.

d. Assist the **OWNER** in dealing with the various Federal, State and Local Agencies having jurisdiction over the project.

e. Assist the **OWNER** in obtaining from the Developer a list of his proposed suppliers and sub-contractors.

f. Assist the **OWNER** in obtaining from the Developer additional details or information when needed at the job site for proper execution of work.

g. Samples: Obtain Quality Assurance (QA) field samples of materials delivered to the site as directed by the **OWNER** and deliver such samples to the appropriate testing laboratory office.

h. Shop Drawings/Requests for Information (RFI):

1) Check for completeness and conformance with the Contract Documents and collaborate with the Design Review Team for issuance of approval.

2) Assist the Design Review Team in approving shop and falsework drawings, specifications and other submissions, recording receipt of this data, maintaining a file of all drawings and submissions, answering Requests for Information (RFI) and checking construction work for compliance in accordance with the Contract Documents.

3) Alert the Developer's field superintendent when it is observed that materials or equipment are being or about to be used or installed before approval of shop drawings or samples, where such are required, and advise the **OWNER** when necessary to disapprove work as failing to conform to the Contract Documents.

4) Review proposed changes or amendments to the conceptual design and report to **OWNER** any deviation from standards.

i. Review of Work, Inspection and Tests:

1) Conduct on-site inspections for the **OWNER** of the work in progress as a basis for determining that the project is proceeding in accordance with the Contract Documents.

2) Provide on-site Quality Acceptance testing of materials (concrete, subbase, and granular fill) in the manner and extent prescribed by the **OWNER**.

3) Monitor the Contractor's maintenance of traffic program and report on the Contractor's ability to carry out the work.

4) Monitor compliance with all required government approvals (e.g. permits, environmental approvals and licenses for the work).

5) Monitor and report to the **OWNER** on construction progress, and deviations from the baseline schedule.

6) Confirm compliance with reporting procedures, permit renewal requirements and associated deadlines for such reporting and renewals as required by the Project's permits and applicable environmental regulations.

7) Verify Substantial Completion and Final Acceptance. This includes the review of all the requirements set forth in the PPA and the Technical Provisions, and the verification of their compliance.

4) Conduct site visits at the frequency necessary to verify that required testing has been accomplished and to ensure the project is conforming to the Contract Documents.

j. Modification: Consider and evaluate the Developer's suggestions for modifications in drawings, specifications, or the work and report them with recommendations to the **OWNER**.

k. Oversight and Review for Quality Assurance (QA):

1) Collect all quality records from the Developer for their Quality Control/Quality Assurance.

2) Identify and report any Non Conformance with the Contract Documents, as a result of defects detection during routine inspection.

3) Maintain for the **OWNER**, a record of Developer and **ENGINEER** test results that show compliance with the testing requirements set forth in the Contract Documents.

4) Review with the developer a set of working drawings on which authorized changes are noted, and deliver to the **OWNER** upon request, but in any event at the completion of the project.

l. Reports:

1) Furnish to the **OWNER** at periodic intervals, as required, progress reports of the project, including the Developer's compliance with the approved construction schedule.

2) Provide the **OWNER** with a monthly report detailing Design and Construction progress, upcoming and achieved milestones, scheduling delays, material issues, significant project issues, possible/foreseeable scope changes that could affect contract pricing.

m. Oversight and Inspection:

1) The following list includes the activities that will be subjected to oversight by the Construction Manager:

- Aesthetics and Landscape Architecture
- Environmental
- Drainage
- Roadway
- Pavement
- Traffic
- Maintenance of Traffic (MOT), Haul Routes, and Access
- Utility
- Right-Of-Way
- Deliverables (all the deliverables produced by the Developer in accordance with Technical Provisions)

n. Conflict of Interest: The **ENGINEER** acknowledges and agrees that the **ENGINEER**, a firm associated with the **ENGINEER** or an individual associated with the **ENGINEER** cannot accept or perform any work (including but not limited to construction engineering, production staking, falsework drawings, shop drawings) for the Developer, material supplier of the Developer or for any of the Developer's subcontractors on this project without approval from the **OWNER**. For purposes of this section a firm is associated with the **ENGINEER** if the firm and **ENGINEER** have a common director, common officer or a common **OWNER**. For purposes of this section an individual is associated with the **ENGINEER** if the individual is an employee of the **ENGINEER** or an employee of a firm associated with the **ENGINEER**.

APPENDIX "B"
INFORMATION AND SERVICES TO BE FURNISHED BY OWNER

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APPENDIX "C"

SCHEDULE

The anticipated schedule for construction on this project is June 15, 2016 through December 31, 2018 for Substantial Completion.

APPENDIX "D"

COMPENSATION

A. Amount of Payment

1. The **ENGINEER** shall receive as payment for the work performed under Item No. 2A, 2B, and 2C a total fee which will not exceed \$1,766,500.00 unless a modification of the Agreement is approved in writing by the **OWNER**.
2. The **ENGINEER** will be paid for the work on a Lump Sum basis for Item 2A and an hourly not to exceed basis for Items 2B and 2C in accordance with rates in Appendix D-1, Hourly Rate Schedule:

Fee Schedule Summary for Project Development Phase:

A. Dedicated Project Construction Representative	
2 Days per week (July 2016 – September 2016)	\$3,400.00 per week
3 Days per week (September 2016 – Dec. 2016)	\$5,100.00 per week
100% Dedicated (January 2017 – Dec. 2017)	\$38,000.00 per month
100% Dedicated (January 2018 – Dec. 2018)	\$39,150.00 per month
B. Dedicated Project Supervision Representative	\$673,400.00
C. On-Call Project Assistance (Hourly not to exceed)	\$50,000.00

B. Additional Services

Additional Services would be services required in connection with permits, right-of-way engineering, right-of-way acquisition, or any legal action or litigation requiring the testimony and/or services of the **ENGINEER**, or if the **OWNER** or any other local, state, or federal agency shall direct or cause the **ENGINEER** to relocate or redesign the project, or any part thereof. The **OWNER** agrees to compensate the **ENGINEER** for Additional Services on the basis of actual hours of work performed on the project at the hourly billing rates noted in APPENDIX "D-1". The Hourly Billing Rates include overhead and fixed fee.

Mileage costs are included in the fee schedule for Items 2A, 2B, and 2C and will not be billed as a reimbursable expense.

C. Method of Payment

Payment shall be made by the **OWNER** to the **ENGINEER** each month as the work progresses.

APPENDIX "D-1"

SCHEDULE OF COMPENSATION

BUTLER, FAIRMAN and SEUFERT, INC.

HOURLY RATE SCHEDULE

<u>Classification</u>		<u>Hourly Rate</u>
E-V	Engineer V (Principal)	\$ 195.00
E-IV	Engineer IV	\$ 184.00
E-III	Engineer III	\$ 154.00
E-II	Engineer II	\$ 117.00
E-I	Engineer I	\$ 82.00
FP-IV	Field Personnel IV (Project Coordinator)	\$ 156.00
FP-III	Field Personnel III	\$ 132.00
FP-II	Field Personnel II	\$ 100.00
FP-I	Field Personnel I	\$ 82.00
EA-III	Engineer's Assistant III	\$ 160.00
EA-II	Engineer's Assistant II	\$ 122.00
EA-I	Engineer's Assistant I	\$ 92.00
SP-I	Support Personnel I	\$ 65.00
C-II	Clerical II	\$ 100.00
C-I	Clerical I	\$ 65.00
P-III	Planner/Environmental Specialist III	\$ 175.00
P-II	Planner/Environmental Specialist II	\$ 107.00
P-I	Planner/Environmental Specialist I	\$ 82.00

The billing rates are effective January 2016 and may be adjusted annually (beginning January 2017) to reflect changes in the compensation payable to the **ENGINEER**.